MINOUTSI SHIPPING CORPORATION v. TRANS CONTINENTAL SHIPPING SERVICES (PTE) LTD.

[O.C.J. (Kulasekaram J.) March 5, 1971]

[Singapore — Suit No. 344 of 1970; Summons-in-Chambers No. 1126 of 1970]

Arbitration — Foreign arbitration award — Enforcement of — Arbitration Ordinance (Cap. 10) s. 9(1)(b) — Reciprocal Enforcement of Commonwealth Judgments Act (Cap. 24, 1970 Edn.),*

Practice and Procedure — Foreign arbitration award — Suit at common law — Enforcement of — What procedure should be followed.

By a specially indorsed writ, issued in Singapore, the plaintiffs claimed "$26,519.83, being the amount due under a charterparty dated October 16, 1968, made between the parties, disputes arising under which were referred to the arbitration of Ralph E. Kingsley in the City of London, whose award was dated 9th December 1969 and has been served on the defendants". Then followed particulars of the claim. Clause 50 of the charterparty provided: "Any dispute arising out of this contract shall, unless the parties agree forthwith on a single arbitrator, be referred to the final arbitrament of two arbitrators carrying on business in London who shall be Members of the Baltic, one to be appointed by each of the parties, with power to such arbitrators to appoint an umpire who shall be a Member of the Baltic."

Certain disputes arose between the plaintiffs and the defendants under the said charterparty, whereupon the plaintiffs, pursuant to clause 50, nominated the arbitrator in London, advised the defendants of such nomination and called upon them to nominate an arbitrator. The defendant failed to nominate an arbitrator. Under the provisions of section 7(b) of the English Arbitration Act, 1950 which is *in pari materia* with section 9(1)(b) of the Singapore Arbitration Act (Cap. 16, 1970 Edn.), the plaintiffs then called upon their arbitrator to assume the function of the sole arbitrator in the reference. After due notice to both parties, the sole arbitrator proceeded to make his award. The defendants did not attend the arbitration. The award was that the defendants should pay the equivalent of S$26,519.83 with interest and costs.

The plaintiffs applied to the Singapore court for leave to sign final judgment against the defendants under R.S.C. 1970, O. 14, and the defendants opposed this application on the grounds: (1) that the arbitration award was bad because the plaintiffs not having nominated an arbitrator, they had not submitted to arbitration in London; (2) though they had agreed that any arbitration under the charterparty should take place in London, they had not agreed that the law of England would apply to such arbitration. Therefore the appointment of a sole arbitrator under the provisions of section 7(b) of the English Arbitration Act, 1950 was not in accordance with the terms of the charterparty and the arbitration award was bad.

Held: (1) clause 50 of the charterparty itself constituted a submission to arbitration in London;

(2) since the arbitration clause was silent as to what law should govern such arbitration proceedings and was also silent on what should take place in the event of one of the parties failing to nominate an arbitrator when called upon to do so, the law of England should apply as the law where the arbitration was to be held. The law of England had been followed, and there should be judgment for the plaintiffs.

[Editorial Note: On appeal, it was again contended *inter alia* that the respondent/plaintiffs should have followed the procedure provided by the Reciprocal Enforcement of Commonwealth Judgments Act (Cap. 24, 1970 Edn.) The Court of Appeal (Civil Appeal No. 37 of 1970, Wee Chong Jin C.J., Tan Ah Tah and Choor Singh JJ.) dismissing the appeal on May 17, 1971, held, in a short oral judgment, that the Reciprocal Enforcement of Commonwealth Judgments Act (Cap. 24, 1970 Edn.) did not aply, since the award, not having been made an order of the English court, was not within the definition of "judgment" in section 2 of Cap. 24. The plaintiff was accordingly correct in suing on the award at common law.]

The following cases were cited in argument: *Norske Atlas Insurance Co. Ltd.* v. *London General Insurance Co. Ltd.* (1927) 28 Ll.L.Rep. 104 and *Bremer Oeltransport G.m.b.H.* v. *Drewry* [1933] 1 K.B. 753.

CIVIL SUIT.

K. A. O'Connor for the plaintiffs.

C. Arul for the defendants.

Kulasekaram J.: This is an application by the plaintiffs for leave to sign final judgment against the defendants under Order 14 of the Rules of the Supreme Court.

The plaintiffs' claim here is for a sum of $26,519.83 being the amount due to them from the defendants under a charterparty dated 16th October 1968 made between the parties with interest and costs.

It was provided by clause 50 of the charterparty that any dispute arising shall be referred to arbitration. Now clause 50 of the charterparty reads as follows: —

"50. *Arbitration*

Any dispute arising out of this contract shall, unless the parties agree forthwith on a single arbitrator, be referred to the final arbitrament of two arbitrators carrying on business in London who shall be Members of the Baltic, one to be appointed by each of the parties, with power to such arbitrators to appoint an umpire who shall be a Member of the Baltic. Any claim must be made in writing and claimant's arbitrator appointed within 18 months after redelivery, and where this provision is not complied with, the claim shall be deemed to be waived and absolutely barred."

Certain disputes arose between the plaintiffs and the defendants under the said charterparty.

The plaintiffs referred the said disputes to arbitration under clause 50 of the said charterparty and appointed Mr. Ralph E. Kingsley of Kempson House, 35/37 Camomile Street in the City of London as their arbitrator under reference and advised the defendants by registered letter dated 9th October 1969 of such nomination and called upon the defendants to nominate their arbitrator.

The defendants however failed to nominate an arbitrator and the plaintiffs thereupon under the provisions of section 7(b) of the English Arbitration Act, 1950 called upon their arbitrator the said Mr. Ralph E. Kingsley to assume the function of sole arbitrator in the reference.

Mr. Ralph E. Kingsley assumed the role of sole arbitrator and after due notice to both parties proceeded to make his award on the reference. The defendants however did not attend the arbitration. The award was that the defendants should pay to plaintiffs the sum of US$8,573.53 which is equivalent to S$26,519.83 with interest at 8% and costs. The full amount of this award is the claim of the plaintiffs in this action.

The defendants oppose this application and their main ground of such opposition would appear to be that

* now Arbitration Act (Cap. 16. 1970 Edn.)

the arbitration award was bad. They say that under the arbitration clause in the charterparty they had to nominate an arbitrator and as they had not so nominated one they did not submit to arbitration. They further say that though they had agreed that any arbitration under the charterparty should take place in London they had not agreed that the law of England would apply to such arbitration. Therefore the appointment of Mr. Ralph E. Kingsley as sole arbitrator under the provisions of section 7(b) of the English Arbitration Act, 1950 when the defendants failed to nominate an arbitrator was not in accordance with the terms of the charterparty and the arbitration award was bad.

I am unable to agree with this submission of the defendants. Here the parties had agreed by the said clause 50 of the charterparty that any disputes between them arising from the dealings on the charterparty shall be referred to arbitration in London. The said clause 50 is silent as to what law shall govern such arbitration proceedings. Moreover it is also silent on what should take place in the event of one of the parties failing to nominate an arbitrator when called upon to do so by the other party to deal with a dispute. In such circumstances as the parties had agreed that the arbitration should take place in London, in the absence of any specific provisions to the contrary in the charterparty the law of England should apply to such arbitration proceedings. Besides the provisions of section 7(b) of the English Arbitration Act, 1950 are *in pari materia* with section 9(1)(b) of the Singapore Arbitration Ordinance. In these circumstances I find that the arbitration was conducted in accordance with the agreement and the award here was made pursuant to provisions of the said agreement and therefore the award here is a good one.

The defendants also took up various other objections of a procedural character against the institution of the action in its present form but having considered them I am of the opinion there is no substance in any of these objections.

In the event I allowed the plaintiffs' application and granted them leave to sign final judgment for the amount of their full claim with costs.

Application allowed.

Solicitors: *Drew & Napier; Rodyk & Davidson.*

FAR EASTERN BANK LTD. v. BEE HONG FINANCE CO. LTD.

[C.A. (Wee Chong Jin C.J., Tan Ah Tah & Choor Singh JJ.) May 18, 1971]

[Singapore — Civil Appeal No. 43 of 1970]

Banking — "A/C payee" cheque — Collecting bank — Duty of care.

Bills of exchange — Cheque marked "A/C payee only" — Payment by collecting bank to person with no account — Whether bank negligent.

Moneylenders — Loan — Share certificates as security.

Tort — Conversion — Cheque — Right to sue.

Damages — Negligent banker — Quantum.

The defendant/appellant and the plaintiff/respondent are companies incorporated in Singapore. The appellant carries on the business of banking in Singapore whereas the respondent's business is one of licenced moneylenders.

On January 17, 1969, the respondent issued a cheque marked "A/C payee only" for $10,000 in favour of Lee Lam. This sum constituted a loan on the security of 7 share certificates which were subsequently discovered to be forgeries. Immediately after receiving the cheque, Lee Lam proceeded to the appellant bank, accompanied by one Aw Yong San, a customer of the appellant bank. The cheque was presented to the bank's sub-accountant who was persuaded to mark the cheque for payment despite the fact that Lee Lam had no account with the appellant bank. The sum of $10,000 was credited to the account of Aw Yong San with the appellant bank. Immediately thereafter, $9,800 was cashed by Lee Lam on a cheque issued to him by Aw Yong San on Aw Yong San's account.

The plaintiff/respondent asked for a declaration that there was negligence on the part of the defendant/appellant's bank in collecting the cheque for its customer, Aw Yong San, and damages for conversion of the cheque, or alternatively $10,000 for money had and received.

The sole question for determination, therefore, was whether the action by the sub-accountant of the appellant bank, in negotiating an "A/C payee only" cheque for a payee who had no account with his bank, showed negligence on the part of the collecting bank.

The learned trial judge held the appellant bank liable, as the sub-accountant acted with deliberation and went out of his way to oblige two total strangers in circumstances when it must have been quite clear to him that he and the bank were on peril when asked to act as collectors of the cheque. His lordship was also of the view that the true owner of the cheque all along was the plaintiff/respondent. Lee Lam never became the true owner by virtue of the fact that he was responsible for the fraud on the plaintiff. In the circumstances, his lordship held that the appellant bank had not discharged its onus of showing lack of negligence.

The defendant/appellant appealed.

Held, allowing the appeal: (1) the respondent had no title to sue under the common law in conversion;

(2) on the facts it was clear beyond doubt that the bank had not acted in any way which could be said to be not without negligence, as the bank made all the enquiries which any bank could reasonably be expected to make.

Case referred to:-

(1) *House Property Co. of London Ltd.* v. *London County and Westminster Bank* (1915) 84 L.J.K.B. 1846.

COURT OF APPEAL.

T. C. Cheng for the appellant.

M. Karthigesu for the respondent.

In the court below *Edward Loke* appeared for the plaintiff and *Miss Patricia Low* for the defendant. The following grounds of decision was given on January 29, 1971:

Winslow J.: The plaintiff and the defendant are companies incorporated in Singapore, the former carrying on business as licenced moneylenders whereas the latter carries on business in banking in Singapore.

On 17th January, 1969 the plaintiff through its managing director, P.W. 1, Ng Chwee Cheng, issued cheque No. GLA 109485 chopped "A/c payee only" for $10,000 in favour of Lee Lam as a loan on the security of 7 share certificates of the face value of